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September 22, 2017

Mary Matava
Otay Mesa Compost Facility
434 Alta Road
San Diego, CA 92154

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mary Matava
Agri Service, Inc
2017 Mackinnon Avenue
Cardiff by the Sea, CA 92007

**Re: Clean Water Act Notice of Intent to Sue/60-Day Notice Letter
Agri Service Inc's Violations of General Industrial Permit**

Dear Ms. Matava:

Please accept this letter on behalf of the Coastal Environmental Rights Foundation (CERF) regarding Agri Service, Inc's ("ASI")'s violations of the State Water Resources Control Board Water Quality Order Nos. 97-03-DWQ and 2014-0057-DWQ, National Pollutant Discharge Elimination System (NPDES), General Permit No. CAS000001, and Waste Discharge Requirements for Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities (Industrial Permit).¹ This letter constitutes CERF's notice of intent to sue for violations of the Clean Water Act and Industrial Permit for ASI's Otay Mesa Compost Facility located at 434 Alta Road, San Diego, CA ("Facility"), as set forth in more detail below.

Section 505(b) of the Clean Water Act requires that sixty (60) days prior to the initiation of a citizen's civil lawsuit in Federal District Court under Section 505(a) of the Act, a citizen must give notice of the violations and the intent to sue to the violator, the Administrator of the U.S. Environmental Protection Agency, the Regional Administrator of the U.S. Environmental Protection Agency for the region in which the violations have occurred, the U.S. Attorney General, and the Chief Administrative Officer for the State in which the violations have occurred (33 U.S.C. § 1365(b)(1)(A)). This letter provides notice of ASI's Clean Water Act violations and CERF's intent to sue.

I. Coastal Environmental Rights Foundation (CERF)

CERF is a non-profit public benefit corporation organized under the laws of the State of California with its main office located at 1140 S. Coast Highway 101, Encinitas, CA. CERF is dedicated to the preservation, protection, and defense of the environment, the wildlife, and the natural resources of the California Coast. Members of CERF use and enjoy the waters into

¹ The Industrial Permit amendments, pursuant to Order No. 2014-0057-DWQ, become effective July 1, 2015. All references are to the Industrial Permit prior to modification pursuant to Order No. 2014-0057-DWQ are to the "Industrial Permit." All references to the Permit as modified by Order No. 2014-0057-DWQ are to the "New Industrial Permit."

which pollutants from ASI's ongoing illegal activities are discharged, namely the Otay River, San Diego Bay, and ultimately the Pacific Ocean.

The public and members of CERF use the Otay River, San Diego Bay and the Pacific Ocean to fish, sail, boat, kayak, surf, swim, scuba dive, birdwatch, view wildlife, and to engage in scientific studies. The discharge of pollutants by the ASI Facility affects and impairs each of these uses. Thus, the interests of CERF's members have been, are being, and will continue to be adversely affected by ASI Owners and/or Operators' failure to comply with the Clean Water Act and the Industrial Permit.

II. Storm Water Pollution and the Industrial Permit

A. Duty to Comply

Under the Clean Water Act, the discharge of any pollutant to a water of the United States is unlawful except in compliance with certain provisions of the Clean Water Act. (See 33 U.S.C. § 1311 (a)). In California, any person who discharges storm water associated with industrial activity must comply with the terms of the Industrial Permit in order to lawfully discharge. ASI enrolled as a discharger subject to the Industrial Permit on October 14, 2015, with WDID No. 9 371026216.

Pursuant to the Industrial Permit, a facility operator must comply with all conditions of the Industrial Permit. Failure to comply with the Industrial Permit is a Clean Water Act violation. (Industrial Permit, § C.1; New Industrial Permit §XXI.A. ["Permit noncompliance constitutes a violation of the Clean Water Act and the Water Code..."]). Any non-compliance further exposes an owner/operator to an (a) enforcement action; (b) Industrial Permit termination, revocation and re-issuance, or modification; or (c) denial of a Industrial Permit renewal application. (*Id.*). As an enrollee, ASI has a duty to comply with the Industrial Permit and is subject to all of the provisions therein.

B. The ASI Facility Discharges Contaminated Storm Water in Violation of the Industrial Permit

Discharge Prohibition A(2) of the Industrial Permit and Section III.C. of the New Industrial Permit prohibit storm water discharges and authorized non-storm water discharges which cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the Storm Water Permit prohibits storm water discharges to surface or groundwater that adversely impact human health or the environment. In addition, receiving Water Limitation C(2) prohibits storm water discharges and authorized non-storm water discharges, which cause or contribute to an exceedance of any water quality standards, such as the CTR or applicable Basin Plan water quality standards. (See New Industrial Permit, §III.D.; §VI.A.). "The California Toxics Rule ("CTR"), 40 C.F.R. 131.38, is an applicable water quality standard." (*Baykeeper v. Kramer Metals, Inc.* (C.D.Cal. 2009) 619 F.Supp.2d 914, 926). "In sum, the CTR is a water quality standard in the General Permit, Receiving Water Limitation C(2). A permittee violates Receiving Water Limitation C(2) when it 'causes or contributes to an exceedance of' such a standard, including the CTR." (*Id.* at 927).

If a discharger violates Water Quality Standards, the Industrial Permit and the Clean Water Act require that the discharger implement more stringent controls necessary to meet

such Water Quality Standards.(Industrial Permit, Fact Sheet p. viii; New Industrial Permit, §XX.B.1; 33 U.S.C. § 1311(b)(1)(C)). The ASI Owners and/or Operators have failed to comply with this requirement, routinely violating Water Quality Standards without implementing BMPs to achieve BAT/BCT or revising the ASI SWPPP pursuant to section New Industrial Permit Section XX.B.

The monitoring data for the ASI Facility indicates consistent, ongoing exceedances and violations of the Industrial Permit. The ASI Owners and/or Operators have discharged and continue to discharge storm water containing pollutants at levels in violation of the above listed prohibitions and limitations during every significant rain event. ASI's sampling data reflects numerous discharge violations. ASI's own sampling data is not subject to impeachment. (*Baykeeper, supra*, 619 F.Supp. 2d at 927, citing *Sierra Club v. Union Oil Co. of Cal.*, (9th Cir. 1987) 813 F.2d 1480, 1492 ["when a permittee's reports indicate that the permittee has exceeded permit limitations, the permittee may not impeach its own reports by showing sampling error"]).

As reflected below, the Facility has exceeded the Basin Plan water quality objectives and benchmarks during every significant rain event.

No.	Discharge Point	Date	Parameter	Units	Result	Benchmark/ WQO	Benchmark/ NAL
1	North	5/6/16	Phosphorus	mg/L	7.37	.1 ¹	2.0 ²
2	North	5/6/16	COD	mg/L	467		120
3	North	5/6/16	Specific Conductance	umhos/cm	709	200	--
4	North	5/6/16	Nitrate+ Nitrite	mg/L	1.49	.68 ²	.68
5	North	12/16/16	Iron	mg/L	.802	.3 ¹	1.0
6	North	12/16/16	COD	mg/L	893		120
7	North	12/16/16	Nitrate+ Nitrite	mg/L	5.2	.68 ²	.68
8	North	12/16/16	Phosphorus	mg/L	.98	.1 ¹	2.0 ²
9	North	12/16/16	TDS	mg/L	1480	1000 ¹	--
10	North	12/22/16	Iron	mg/L	3.05	.3 ¹	1.0
11	North	12/22/16	Nitrate+ Nitrite	mg/L	6.11	.68 ²	.68
12	North	12/22/16	Phosphorus	mg/L	.15	.1 ¹	2.0 ²
13	North	12/22/16	TSS	mg/L	111		100
14	North	1/20/17	Iron	mg/L	4.31	.3 ¹	1.0
15	North	1/20/17	COD	mg/L	467		120
16	North	1/20/17	Phosphorus	mg/L	3.30	.1 ¹	2.0 ²
17	North	2/27/17	Iron	mg/L	4.16	.3 ¹	1.0
18	North	2/27/17	COD	mg/L	217		120
19	North	2/27/17	Phosphorus	mg/L	3.64	.1 ¹	2.0 ²

¹ Basin Plan Objective for Otay Hydrologic Unit, Otay Valley, Basin Plan Table 3-2

² EPA 2015 Multi Sector General Permit Benchmark, Table 8.C-1

Every day the ASI Owners and/or Operators discharged or continue to discharge polluted storm water in violation of the Discharge Prohibitions and Receiving Water Limitations of the New Industrial Permit is a separate and distinct violation of the Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The ASI Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since ASI's enrollment. These violations are ongoing and will continue each day contaminated storm water is discharged in violation of the requirements of the Permit.

C. Failure to Develop and/or Implement BMPs that Achieve Compliance with Best Available Technology Economically Achievable and Best Conventional Pollutant Control Technology

The New Industrial Permit requires dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges through implementation of the Best Available Technology Economically Achievable (BAT) for toxic pollutants² and Best Conventional Pollutant Control Technology (BCT) for conventional pollutants.³ Specifically, the Permit "requires control of pollutant discharges using BAT and BCT to reduce and prevent discharges of pollutants, and any more stringent effluent limitations necessary for receiving waters to meet applicable water quality standards." (New Industrial Permit, §I.D.32; see also, §V.A.).

EPA Benchmarks are the pollutant concentrations which generally indicate whether a facility has successfully developed or implemented BMPs that meet the BAT/BCT. Discharges with pollutant concentration levels above EPA Benchmarks, water quality objectives and/or the CTR demonstrate that a facility has failed to develop and/or implement BMPs that achieve compliance with BAT for toxic pollutants and BCT for conventional pollutants. The Facility's monitoring data demonstrates consistent exceedances of not only Basin Plan water quality objectives, but also EPA benchmarks. (See monitoring data above).

Thus, ASI's storm water discharge sampling data demonstrates the Facility has not developed and/or implemented BMPs that meet the standards of BAT/BCT. (See *Baykeeper*, *supra*, 619 F.Supp. 2d at 925 ["Repeated and/or significant exceedances of the Benchmark limitations should be relevant" to the determination of meeting BAT/BCT]).

Further, information available to CERF indicates ASI has failed to implement and/or develop BMPs that meet BAT and BCT. As noted in the Facility's Storm Water Pollution Prevention Plan ("SWPPP"), minimal, ineffective BMPs are used at the Facility. No filtration devices are installed to address the Facility's discharge of metals, nitrate/nitrite, and phosphorus. (*Id.* at p. 26.). Further, no calculations are provided for the sedimentation basin advanced BMP. (*Id.*; New Industrial Permit, §X.H.6).

Notably, Permit Effluent Limitation V.A. is a separate requirement, independent of the iterative process triggered by exceedances of the Permit's NALs. "The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives." (New

² Toxic pollutants are found at 40 CFR § 401.15 and include, but are not limited to: lead, nickel, zinc, silver, selenium, copper, and chromium.

³ Conventional pollutants are listed at 40 CFR § 401.16 and include biological oxygen demand, total suspended solids, pH, fecal coliform, and oil and grease.

Industrial Permit, §I.M.63). Thus, the NALs do not represent technology-based criteria relevant to determine whether an industrial facility has implemented BMPs that achieve BAT/BCT. Therefore, development of an Exceedance Response Action Plan pursuant to Permit Section XII neither addresses nor alleviates the aforementioned violations of Effluent Limitation V.A.

In summary, the ASI Owners and/or Operators are in violation of Section V.A. of the Industrial Permit. Every day ASI operates with inadequately developed and/or implemented BMPs in violation of the BAT/BCT requirements is a separate and distinct violation of the Permit and Section 301(a) of the Clean Water Act. (33 U.S.C. § 1311 (a)). Therefore, ASI has been in daily and continuous violation of the BAT/BCT requirements of the Industrial Permit every day since at least October 14, 2015, and is subject to penalties for all such violations.

These violations are ongoing and ASI will continue to be in violation every day it fails to develop and/or implement BMPs that achieve BAT/BCT to prevent or reduce pollutants associated with industrial activity in storm water discharges at the Facility.

D. Failure to Monitor

The New Industrial Permit requires dischargers to take two samples between July 1 and December 31 and two samples between January 1 and June 30. (New Industrial Permit, §XI.B.2). Nonetheless, ASI failed to comply with these requirements. The ASI Owners and/or Operators have failed to take the required four samples during the 2015-2016 reporting period, though there were numerous qualifying storm events. (See Attachment). ASI also failed to sample for iron during the 5/6/16 rain event. Iron is a required SIC-specific metal constituent. (Permit, Table D, SIC 2875).

Every day the ASI Owners and/or Operators failed to adequately monitor the Facility is a separate and distinct violation of the Industrial Permit, New Industrial Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). These violations are ongoing and the ASI Owners and/or Operators will continue to be in violation every day they fail to adequately monitor the Facility. The ASI Owners and/or Operators are thus subject to penalties in accordance with the Industrial Permit – punishable by a minimum of \$37,500 per day of violations prior to November 2, 2015, and \$51,570 per day of violations occurring after November 2, 2015. (33 U.S.C. §1319(d); 40 CFR 19.4; New Industrial Permit, §XXI.Q.1).

E. Failure to Develop and Implement Adequate Level 1 ERA Report

The ASI Level 1 ERA Report, dated December 22, 2016, fails to address the Facility's multiple NAL exceedances. The Level 1 ERA Report does not suggest any additional advanced BMPs. Rather, it relies solely on additional berms around stockpiles prior to predicted rain events. As evidenced by the continued exceedances post January 1, 2017, this additional BMP was inadequate.⁴

Information available to CERF also indicates ASI has not adequately implemented or updated its BMPs and therefore NAL exceedances are likely to continue this wet season. Compost, equipment, and rusty materials remain exposed during rain events, likely contributing to the Facility's continued water quality objective exceedances.

⁴ Further, because only one rain event was sampled during the 2015-2016 reporting period, and iron was improperly excluded from analysis, the Level 1 ERA Report fails to address the Facility's iron NAL exceedances.

Every day the ASI Owners and/or Operators fail to submit and implement an adequate Level 1 ERA Report is a separate and distinct violation of the New Industrial Permit and Section 301(a) of the Clean Water Act. (33 U.S.C. § 1311(a)). These violations are ongoing and the ASI Owners and/or Operators will continue to be in violation every day they fail to revise, submit and implement an appropriate Level 1 ERA Report.

III. Remedies

Upon expiration of the 60-day period, CERF will file a citizen suit under Section 505(a) of the Clean Water Act for the above-referenced violations. During the 60-day notice period, however, CERF is willing to discuss effective remedies for the violation noted in this letter. If you wish to pursue such discussions in the absence of litigation, it is suggested that you initiate those discussions immediately. If good faith negotiations are not being made, at the close of the 60-day notice period, CERF will move forward expeditiously with litigation.

ASI must develop and implement a SWPPP which complies with all elements required in the New Industrial Permit, including the requisite monitoring, and address the consistent, numerous, and ongoing water quality violations at the Facility. Should the ASI Owners and/or Operators fail to do so, CERF will file an action against ASI for its prior, current, and anticipated violations of the Clean Water Act.

CERF's action will seek all remedies available under the Clean Water Act §1365(a)(d). CERF will seek the maximum penalty available under the law which is \$37,500 per day of violations prior to November 2, 2015, and \$51,570 per day of violations occurring after November 2, 2015. (33 U.S.C. §1319(d); 40 CFR 19.4; New Industrial Permit, §XXI.Q.1). CERF may further seek a court order to prevent ASI from discharging pollutants. Lastly, section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits prevailing parties to recover costs, including attorneys' and experts' fees. CERF will seek to recover all of its costs and fees pursuant to section 505(d).

IV. Conclusion

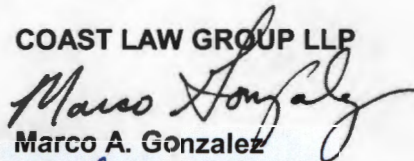
CERF has retained legal counsel to represent it in this matter. Please direct all communications to Coast Law Group:

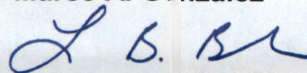
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CERF will entertain settlement discussions during the 60-day notice period. Should you wish to pursue settlement, please contact Coast Law Group LLP at your earliest convenience.

Sincerely,

COAST LAW GROUP LLP


Marco A. Gonzalez



Livia Borak Beaudin

Attorneys for

Coastal Environmental Rights Foundation

CC:

Alexis Strauss Acting Regional Administrator U.S. EPA, Region 9 75 Hawthorne Street San Francisco, CA, 94105	Dave Gibson, Executive Officer Catherine Hagan, Staff Counsel San Diego Regional Water Quality Control Board 2375 Northside Drive, Suite 100 San Diego, CA 92108-2700
Scott Pruitt EPA Administrator William Jefferson Clinton Building 1200 Pennsylvania Avenue N.W. Washington, DC 20004	Eileen Sobeck Executive Director State Water Resources Control Board P.O. Box 100 Sacramento, CA 95812-0110
Mary Matava Agri Service Inc 3720 Oceanic Way #204 Oceanside CA 92056	

Precipitation Data

STATION	NAME	LATITUDE	LONGITUDE	ELEVATION	DATE	PRCP
USW00003178	SAN DIEGO BROWN FIELD, CA US	32.57222	-116.97944	157	7/19/2015	0.86
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USW00003178	SAN DIEGO BROWN FIELD, CA US	32.57222	-116.97944	157	11/3/2015	0.36
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USW00003178	SAN DIEGO BROWN FIELD, CA US	32.57222	-116.97944	157	11/15/2015	0.29
USW00003178	SAN DIEGO BROWN FIELD, CA US	32.57222	-116.97944	157	11/25/2015	0.13
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Precipitation Data

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